IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 64 of 2006

MOHAMMED AYUB
V/S
ABDUL GAFOOR

Mr. KC SAMDARIYA, for the appellant / petitioner

Mr. RR NAGORI, for the respondent

Date of Order : 8.9.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant, and perused the record.

The two learned Courts below have decreed the plaintiff's suit for eviction on the ground of default, subletting, and bonafide necessity, and by deciding question of comparative hardship, and partial eviction.

Assailing the impugned decree, it is contended that in view of the provisions of Section 14(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, the suit is not maintainable, as the premises in question are commercial premises, let out for business purposes, and the suit has been filed on the ground provided in Section 13(1)(h) of the Act, and therefore, on the face of it, the suit is not maintainable with the result that the impugned decree is liable to be quashed and set aside.

I have considered the submissions. It is a

different story, as to whether from the findings of the learned Courts below on the factual aspect, as to whether five years' time has elapsed from the date of commencement of tenancy till filing of the suit or not, the fact does remain that present suit is a suit, which has been filed on the ground of default, and subletting as well, apart from the ground covered by Section 13(1)(h).

In my view, on the face of the language of Section 14(3), it cannot be said that the suit for eviction for commercial premises cannot be filed on other grounds before expiry of five years from the date of commencement of the tenancy. In that view of the matter, simply because the ground of reasonable and bonafide necessity has also been added alongwith other grounds, it cannot be said that the entire suit would be barred. Thus, since the suit is filed on other grounds as well, it cannot be said that the suit is barred altogether.

Then coming to the merits of the other grounds, the determination of the arrears of rent made by the learned trial Court under Section 13(3) of the Act vide order dated 23.3.2004, and the appellant failed to deposit the determined amount within the time permitted, or even permissible time, with the result that vide order dated 6.2.2002, the appellant's defense against eviction was struck off. Against that order, an appeal was also filed, that too was dismissed vide order dated 7.3.2003.

Learned counsel for the appellant was pointedly

asked, as to how these two orders dated 6.2.2002, and 7.3.2003 are assailable, or are incorrect, but the learned counsel could not satisfy anything about unsustainability of these orders. That being the position, since the determination was made for a period of more than six months, on account of rent having not been paid, and after determination, the determined amount has not been deposited, and the learned Courts below have found the appellant to have committed default in payment of rent, as contemplated by Section 13(1)(a), without going into the other grounds of eviction, the decree for eviction is not required to be interfered with in my second appellate jurisdiction.

The appeal thus, has no force, and is dismissed summarily.

At the request of the learned counsel for the appellant, the appellant is given time upto 31st December 2007 to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decretal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today and shall further

continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

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